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1 P R O C E E D I N G S

2 (10:19 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument
4 first this morning in Case 10-1121, Knox v. the Service
5 Employees International Union.

6 Mr. Young.

7 ORAL ARGUMENT OF WILLIAM J. YOUNG

8 ON BEHALF OF THE PETITIONERS

9 MR. YOUNG: Mr. Chief Justice, and may it
10 please the Court:

11 Before addressing SEIU's motion to dismiss
12 for mootness, it is important to remember the underlying
13 facts of this case. For 10 months in 2005 and 2006,
14 more than 36,000 nonmembers, or nearly 40 percent of
15 those employees represented by SEIU employed by the
16 State of California, were compelled to contribute to the
17 SEIU's \$12 million Political Fight-Back Fund without
18 being provided the opportunity to challenge the amount
19 of the fee, and to object to its exaction required by
20 the First Amendment.

21 Adding insult to that injury, the Ninth
22 Circuit said that nonmembers could never say no to
23 contributing to SEIU's political expenditures for ballot
24 propositions, at least Proposition 76. They have no
25 right to refuse to bankroll that element of SEIU's

1 political speech. This defies this Court's decisions,
2 distorting the political process on a massive scale.

3 JUSTICE KAGAN: Mr. Young, could I ask you
4 to speak to the mootness question first?

5 MR. YOUNG: I was just addressing that.

6 JUSTICE KAGAN: As -- as I understand your
7 brief, you're -- you're essentially saying that it's
8 impossible to moot a claim for nominal damages. Is --
9 is that a correct reading of your position?

10 MR. YOUNG: I'm not sure I would go that
11 far, Justice Kagan. I think in this case, the
12 wishy-washiness, as it were, of the language used by
13 SEIU when it distributed this pasted-on dollar to the
14 class -- or dollars, more accurately -- was inadequate
15 because it failed to represent the importance of the
16 judgment that the nonmember class had won.

17 JUSTICE KAGAN: So that's a different point,
18 right, which is that the notice was inadequate --

19 MR. YOUNG: That would be correct.

20 JUSTICE KAGAN: And when you say
21 "inadequate," I read you to be saying sort of not
22 apologetic enough. And -- in other words, not saying,
23 look, you had a claim against us, we think you're right;
24 it was a valid claim; here is your judgment in
25 satisfaction of that claim; that it didn't forthrightly

1 say that. But do you think if it had forthrightly said
2 that, we would be living in a different Article III
3 universe?

4 MR. YOUNG: Not in this case, Justice Kagan.

5 Turning to the adequacy of the notice, of
6 the financial disclosure, that did not comply with the
7 district court's judgment, either. If -- if the only
8 question were the distribution of nominal damages, then
9 perhaps we would be living in that different Article III
10 universe. But this case is about the judgment of the
11 district court that the SEIU was attempting to comply
12 with. They failed to do so in virtually all of its
13 elements.

14 JUSTICE KAGAN: And how is that? How did
15 they fail to comply, other than the question of whether
16 they were forthright enough about the fact that they
17 were satisfying the claim?

18 MR. YOUNG: The -- the district court had
19 ordered -- described the type of notice that it
20 anticipated. The district court specifically determined
21 that SEIU's subsequent 2006 financial disclosure was
22 inadequate to cure the problem that was caused by the
23 seizure of fees starting in September 2005. And that is
24 on 73a of the petition appendix B. The union in this
25 case merely sent the same financial disclosure in the

1 notice that it sent -- to try to moot the case, that it
2 had sent in June of 2006. Well, the district court had
3 already said this is inadequate. That seems to me to
4 end the inquiry.

5 Obviously, the district court did not
6 contemplate that the notice that was sent in June 2006
7 satisfied the obligations of its judgment; else it
8 hardly could have ordered a useless act in ordering a
9 new type of notice go out.

10 CHIEF JUSTICE ROBERTS: And the reason
11 that's important in terms of the content of the notice,
12 the inadequacy, is what?

13 MR. YOUNG: The reason that is important,
14 Justice -- Mr. Chief Justice, excuse me -- is that the
15 SEIU is asserting that the case has become moot because
16 it has now complied with the district court's judgment.

17 CHIEF JUSTICE ROBERTS: I thought -- I
18 thought your argument was that the -- a different type
19 of notice would have resulted in more members electing
20 to opt out, to demand the refund of their assessments?

21 MR. YOUNG: And that's certainly one of the
22 possible consequences. Obviously, I -- we would -- that
23 is speculative to some extent. But since the purpose of
24 the notice is to provide the information necessary to --
25 to object, one of the purposes, then we certainly

1 anticipate that there would be more objectors were there
2 to be an -- an adequate notice that complies with the
3 district court's judgment.

4 JUSTICE ALITO: If the special assessment
5 requires a different kind of notice, and possibly a
6 different kind of opt-in or opt-out regime, would the
7 case be moot?

8 MR. YOUNG: If the notice -- I'm sorry, I
9 didn't understand.

10 JUSTICE ALITO: Well, we're not dealing here
11 with the kind of notice -- with the typical Hudson
12 notice given at the beginning of the year, when the
13 annual dues are collected. We're dealing with a special
14 assessment. Now, if a different kind of notice is
15 constitutionally required in that context, would this
16 case be moot?

17 MR. YOUNG: No, it would not. Obviously, we
18 have -- we have -- still have the nominal damages
19 question, and the adequacy of the payment --

20 JUSTICE ALITO: My question is whether
21 the -- the different requirements, which presumably were
22 not met here in the context of the special assessment,
23 if there are different requirements in that context,
24 would that be enough to preserve this case as a live
25 controversy?

1 MR. YOUNG: So long as the union failed to
2 provide them, and at least in this case, the district
3 court's judgment, we believe, provides an adequate
4 respect for Hudson's underlying requirement,
5 Justice Alito.

6 JUSTICE GINSBURG: Mr. -- Mr. Young --

7 MR. YOUNG: Yes, Justice --

8 JUSTICE GINSBURG: -- as I understand, the
9 union recognizes that a consequence of mootness would be
10 that the Ninth Circuit judgment is vacated. Now, if the
11 union would also recognized that that means the district
12 court judgment stays in place, so if the Ninth Circuit
13 judgment is worked out and you're left with the district
14 court judgment as the law of the case, then I think it
15 is moot, isn't it?

16 MR. YOUNG: No, Justice Ginsburg, and this
17 is why: The union would remain free to return to its
18 old ways -- the very type of reason that this Court
19 declined to find mootness in W.T. Grant. The union has
20 made much -- much of a showing -- or much of a show,
21 more accurately, of the fact that it has changed its
22 internal policy. It won't do this for 180 days. But
23 that can hardly be sufficient for this Court to find
24 mootness in this case. The union made this wonderful
25 and -- and meaningful policy change on 6 days' notice.

1 JUSTICE GINSBURG: But it wasn't -- this
2 case is about a completed episode. It's about the
3 special assessment that is wrong or right.

4 MR. YOUNG: That is true, Justice Ginsburg.
5 But it is also about the declaratory relief that was
6 ordered by -- that was entered by the district court.
7 It is about the -- which was virtually injunctive relief
8 in this case.

9 It is also about the effect of that judgment
10 for future activities, and how that will affect the way
11 SEIU operates.

12 JUSTICE GINSBURG: Does it have --

13 JUSTICE KENNEDY: Well, are you saying that
14 it's capable of repetition, yet aiding review? I'm not
15 quite sure.

16 MR. YOUNG: It would certainly be so in this
17 case, Justice Kennedy. The union set a very short
18 time -- well, a relatively short time period, given the
19 length of time a case comes up from the courts as a rule
20 in this Court.

21 JUSTICE KENNEDY: Does the injunction have
22 future -- future terms? Is it a permanent injunction or
23 is it just an injunction that relates to the notice that
24 is required in this case?

25 MR. YOUNG: Just -- just to be clear, there

1 is -- I'm talking about something that's tantamount to
2 an injunction, Justice Kennedy. It wasn't actually
3 phrased as an injunction. It was an affirmative,
4 ordering an affirmative act.

5 JUSTICE KAGAN: But isn't that important,
6 Mr. Young, because usually where we've talked about
7 capable repetition, or where we've talked about the same
8 thing could happen again, it's where an injunction has
9 been before us rather than a suit for damages as to a
10 past act.

11 MR. YOUNG: Yes, Justice Kagan, I think that
12 has been generally the case. I -- in my research, I
13 could find very few cases where it wasn't clear to me
14 that this Court was addressing injunctive relief.
15 Hudson itself it seems to me did not specifically
16 discuss the entry of injunctive relief in the lower
17 court, and Hudson itself addressed a mootness issue.

18 If we -- if we talk about these cases in
19 their -- in their strictest sense, the union's notices
20 are all annual, so by the theory that it becomes moot
21 when those notices expire, or potentially moot when
22 those notices expire, this Court would never address
23 these issues, because it would -- I can't imagine one of
24 these cases ever getting up to this Court in as little
25 as a year.

1 But, the -- this Court in Hudson, in I
2 believe it was footnote 12, said that: "This Court
3 reviews the policy, the procedure, the acts as they were
4 defended in the district court." And the union's policy
5 and procedure and acts here were defended in the
6 district court. And therefore, cases like this should
7 not become moot, because it is capable of repetition and
8 would be evading review simply by the mere limits of how
9 long these policies and procedures are in effect.

10 JUSTICE KENNEDY: Do you make that argument
11 in your opposition?

12 MR. YOUNG: It -- it seems to me,
13 Justice Kennedy, it is implicit in our argument,
14 although clearly our main point in that argument is that
15 this is a -- a paradigm case of voluntary cessation of
16 allegedly unlawful activity. Until cert was granted in
17 this case, until the Petitioner's merits brief was
18 filed, SEIU was vigorously defending its practice. It
19 remained free to impose that practice.

20 JUSTICE GINSBURG: But that's another --
21 something quite different than the capable of returning
22 to old ways, because here we do have a discrete episode
23 that's over. And there was no question that, even
24 though -- what was this, in 2005 -- that the period in
25 2005-2006, when the special assessment was in effect,

1 that was long over, but you were continuing to litigate
2 it. And nobody suggested that it would become moot
3 simply because the period was over.

4 MR. YOUNG: That's -- that's true, Justice
5 Ginsburg. Pardon me.

6 This argument -- this argument was not
7 raised until we were before this Court, the union's
8 argument that the case had somehow become moot, and
9 until it issued a notice --

10 JUSTICE GINSBURG: Well, they said that it
11 had become moot because they gave you all the relief you
12 requested, so there was nothing left to the case.

13 MR. YOUNG: Well, "all the relief," Justice
14 Ginsburg, implies that they had complied with the
15 district court's judgment. As to the notice, we -- we
16 believe that they have not, and -- and we believe that's
17 clear because of the very fact that the district court
18 rejected the 2006 financial disclosure as adequate.
19 And --

20 CHIEF JUSTICE ROBERTS: Maybe it's a good
21 point for you to move to the merits.

22 MR. YOUNG: Yes, thank you,
23 Mr. Chief Justice.

24 JUSTICE SOTOMAYOR: Could I ask you a
25 question about the merits?

1 MR. YOUNG: Yes, certainly, Justice
2 Sotomayor.

3 JUSTICE SOTOMAYOR: Are you attacking the
4 normal system of basing assessments moving forward,
5 based on past accounting and chargeability and
6 non-chargeability? Or are you just attacking the
7 special assessment?

8 MR. YOUNG: I -- I appreciate the question,
9 Justice Sotomayor. No, we are not attacking the normal
10 Hudson procedures. On --

11 JUSTICE SOTOMAYOR: All right. So
12 articulate for me -- what's -- borrowing a phrase from
13 one of my colleagues yesterday, how do we write this
14 opinion? When is a second Hudson notice required?
15 Let's presume for the sake of argument that the union
16 had cost overruns. Labor salaries went up; printing
17 costs went up, not for lobbying; but generally there was
18 a 10 percent increase in their expenses across the board
19 because various contracts that they were involved in
20 required it. Would you require a second notice in that
21 circumstance?

22 MR. YOUNG: Yes, Justice Sotomayor.

23 We would -- we believe -- pardon me -- that
24 a new Hudson notice is required whenever there is a
25 material alteration in the obligations that are imposed

1 upon nonmembers. The values that --

2 JUSTICE SOTOMAYOR: Articulate that again?

3 A material change --

4 MR. YOUNG: A material increase -- or
5 increase in general terms, in the obligation imposed
6 upon the nonmembers. In this case I don't think anybody
7 would dispute the 25 percent --

8 JUSTICE SCALIA: A material new assessment?

9 MR. YOUNG: A material new assessment, yes,
10 Justice Scalia.

11 JUSTICE SCALIA: Okay. So we are talking
12 about money here, right?

13 MR. YOUNG: Yes, we are. Certainly --

14 JUSTICE SCALIA: Okay.

15 CHIEF JUSTICE ROBERTS: But without regard
16 to the reason for the assessment?

17 MR. YOUNG: I think as a matter of principle
18 I would have to say yes, Mr. Chief Justice. The
19 nonmember --

20 CHIEF JUSTICE ROBERTS: Well, I'm not sure
21 that -- that -- this may just simply be repeating
22 Justice Sotomayor's question, but if they say we have to
23 raise the assessment 10 percent because, as she said,
24 you know, we estimated the printing costs for the union
25 newsletter, whatever, was going to be this and it turns

1 out they raised it, it's going to be that, so we know we
2 are going to have to get additional money for things
3 that are indisputably chargeable, why do you need
4 special procedures in that case?

5 MR. YOUNG: Well, it wouldn't be so much a
6 special procedure as a new opportunity to object and
7 challenge the amount of the fee, Mr. Chief Justice.

8 Certainly one of the elements -- and we
9 recognize, of course, that the primary reason
10 individuals object is political expenditures -- but this
11 Court said very clearly in Abood that people can object
12 for any reason, for no reason, for a good reason, for a
13 bad reason; nobody can inquire as to why someone
14 objects.

15 And certainly when a material -- there has
16 been a material increase in the obligation imposed upon
17 nonmembers, they may choose to make an economic decision
18 that heretofore they chose not to make. They may choose
19 to minimize, particularly the non-objectors, they may
20 choose that they want to minimize the financial
21 obligations they are paying to the union at that time.

22 JUSTICE BREYER: It's -- it's peculiar,
23 because in the circumstance where the extra assessment
24 is all going to go to chargeable activities, in fact
25 that means economically speaking the following year the

1 objector will be better off, not worse off, because
2 there is a higher percentage of the total fee that's
3 being paid to chargeable activities.

4 So this special assessment that Justice
5 Sotomayor and the Chief Justice were talking about is
6 one that will benefit the objector, if he keeps quiet
7 and says nothing. So it's a little hard to imagine the
8 frame of mind that would say, I need the notice because
9 now I might object whereas I wouldn't have before.

10 MR. YOUNG: Justice Breyer, the reason for
11 the notice is these people may not trust the union.
12 They -- they may choose to challenge the amount of the
13 fee.

14 JUSTICE BREYER: I see that point. Can I
15 ask you -- oh, are you -- you want to pursue that
16 further, or are we --

17 CHIEF JUSTICE ROBERTS: Go ahead.

18 JUSTICE BREYER: All right. Let me give you
19 this example.

20 MR. YOUNG: Sure.

21 JUSTICE BREYER: And now I -- but I think I
22 see what your answer is. Imagine it's year 2. In year
23 1 expenditures broke down so that it was 70 percent
24 chargeable, 30 percent not chargeable. Got that?

25 MR. YOUNG: Yes, sir.

1 JUSTICE BREYER: And normally under Hudson
2 that means in year 2 the deal is, the objectors pay
3 70 percent, right?

4 MR. YOUNG: Yes.

5 JUSTICE BREYER: In the middle of year 2,
6 surprisingly, something comes up. Something comes up, a
7 surprise to the union, and they want to have a special
8 assessment. And you're saying they just can't without
9 going through this procedure all over again?

10 MR. YOUNG: That would be correct,
11 Justice Breyer. And now talking about --

12 JUSTICE SOTOMAYOR: Can they take the money
13 that they collected?

14 MR. YOUNG: I'm sorry?

15 JUSTICE SOTOMAYOR: Can they take the money
16 that they collected under the first notice and, instead
17 of doing a special assessment, in the middle of it this
18 campaign gets announced by the governor, and can they
19 then divert the chargeable amount that they have
20 predicted and spend it on the non-chargeable amount? Or
21 are you -- or does that require a second Hudson notice,
22 without a special assessment?

23 MR. YOUNG: I understand, Justice Sotomayor.
24 And no, under that case I don't believe it would.

25 JUSTICE BREYER: All right, so this is a

1 peculiar rule that you have asked us to adopt. The rule
2 is that where there is a special assessment and it will
3 make all the objectors better off, they have to have a
4 special notice that they can object. But where the rule
5 is that we are going to take money we already collected
6 from them and spend it for a totally political purpose,
7 we don't give them a special notice and they don't have
8 to object.

9 Now, that seems totally backwards, but I
10 understand why you get there, and my suspicion is, which
11 you can confirm, is that's the only administrable system
12 you can think of.

13 JUSTICE SCALIA: Do you concede that it is
14 going to make them better off? I would -- I would
15 assume that that's your principal objection. They don't
16 know whether this new assessment is indeed going to be
17 divided the way the original one was or not. They might
18 want to challenge --

19 MR. YOUNG: That's --

20 JUSTICE SCALIA: -- whether -- whether it's
21 all going to be used for -- for assessable activities or
22 not. And they have no -- you are telling me they --

23 JUSTICE BREYER: Right. But in my --

24 JUSTICE SCALIA: At the very least, they
25 have to make a -- an interest-free loan to the -- to the

1 union until such time as they can challenge it.

2 MR. YOUNG: Well, that's exactly correct,
3 Justice Scalia.

4 JUSTICE BREYER: Yes, but the hypothetical,
5 if I could continue with it, is -- is perhaps
6 unrealistic, but they have 20 bishops and the 14 most
7 honest people in the United States, and they have all
8 absolutely guaranteed and everybody agrees that this
9 goes to chargeable activity. And where I was going with
10 my question, which you see where I was -- you are with
11 me on this, right?

12 MR. YOUNG: Yes. Right.

13 JUSTICE BREYER: And combine the two. What
14 I'm trying to point out and get your response is that
15 you have been forced into this position to create a
16 workable system. Now, why is that workable system one
17 whit better than the workable system we already have,
18 which is all this washes out in a fair manner the
19 following year, that there is an inevitable year's lag,
20 it doesn't work perfectly, but it's as good as any
21 other, and all we have to say is it's better than yours?
22 Now, why is yours better than that?

23 MR. YOUNG: Well, I recall the bishops from
24 the last time I was here, Justice Breyer. I think they
25 made an appearance then.

1 JUSTICE BREYER: They are useful to me.

2 (Laughter.)

3 MR. YOUNG: They are, I'm sure.

4 JUSTICE SCALIA: I assume we wouldn't need a
5 Hudson notice at all, if -- if bishops affirmed all of
6 these things, right?

7 (Laughter.)

8 MR. YOUNG: You anticipate my next point,
9 Justice Scalia. These -- these aren't bishops and, with
10 due respect to our litigation opponents in this case,
11 these are people that nonmembers don't trust. These are
12 people with whom nonmembers do not wish to affiliate.
13 And these are people that the nonmembers do not wish to
14 support, and --

15 JUSTICE SOTOMAYOR: The problem is in this
16 system, going back to Justice Breyer's practicality,
17 they will get a chance to object; it just won't be at
18 the moment of the special assessment; it will be the
19 following year. So when the union gives its new notice,
20 it's going to set forth its chargeable and
21 non-chargeable amounts as audited, and it will say, as
22 it did -- as it's done in the briefs before us: On
23 Proposition 76 we are going to take 50 percent as
24 chargeable. And the union members can come in and give
25 a Lehnert objection, those who want to. Those who don't

1 know it's happened and they agree to it.

2 Isn't that correct? They do get a chance to
3 object; the question is the timing.

4 MR. YOUNG: Then the problem is, Justice
5 Sotomayor, understanding the practice --

6 JUSTICE SOTOMAYOR: Is there an answer to
7 that? They will get a chance to object then?

8 MR. YOUNG: They will get a chance to object
9 after they have already paid the interest-free loan.

10 JUSTICE SOTOMAYOR: But that's true of the
11 first example I gave you. If something happens in the
12 middle of the year and the union needs to divert
13 already-assessed funds to challenge a election, they can
14 do it and you said that's okay.

15 MR. YOUNG: And the nonmembers would have
16 the chance to challenge that, but it would be within the
17 normal system of ordinary union dues.

18 We, and I believe this Court in Hudson,
19 presume that any reasonably competent union management
20 would -- would have relatively stable expenditures over
21 the years.

22 JUSTICE SCALIA: Isn't -- isn't the premise
23 of Hudson that you give the notice before, before you --
24 you receive the notice before you have to cough up the
25 money?

1 MR. YOUNG: Yes.

2 JUSTICE SCALIA: And what's now proposed is,
3 well, for -- if there is an additional assessment, you
4 cough up the money first and then later you straighten
5 it out. Do you get -- do you get the interest?

6 MR. YOUNG: That seems to me to be the
7 problem, Justice Scalia. The people who got the
8 June 2005 notice were left in the dark -- indeed, the
9 union may have been in the dark -- as to this special
10 assessment. But once the union agreed to, decided to
11 impose the special assessment, the union was required by
12 Hudson's principles to shed some light. Perhaps it is
13 less predictive, less accurate, to say: We intend to
14 spend the money this way. But when you have an
15 assessment which is purely intended for politics, and
16 that's what the union said, to create a Political
17 Fight-Back Fund, that's not --

18 JUSTICE BREYER: Does your Hudson notice
19 tell you about what is going to happen next year? I
20 thought your Hudson notice told you this was the
21 breakdown for last year and as far as we can tell that's
22 what it will be next year, but things should change.
23 What does the Hudson notice tell you?

24 MR. YOUNG: The Hudson notice provides you
25 with an opportunity to object and some assurance,

1 because of the audit requirement --

2 JUSTICE BREYER: But am I right in my
3 description of it?

4 MR. YOUNG: I think that would be a fair
5 description, Justice Breyer.

6 CHIEF JUSTICE ROBERTS: Do they carry over
7 from 1 year to the next, or do you have to refile your
8 objection to the union expenditures every year?

9 MR. YOUNG: Most unions, Mr. Chief Justice,
10 require an annual objection. Now, of course there would
11 be nothing -- we find nothing wrong with an annual
12 challenge requirement if you choose to challenge that
13 year's figures, because obviously it's a specific event.
14 But most unions seem to require annual objection, so you
15 have to say again and again: I don't want to pay for
16 your politics. But that's not raised in the --

17 JUSTICE SOTOMAYOR: But going back to the --
18 forget about special assessments. I think in one of the
19 briefs, I know in one of the briefs, someone says:
20 Elections happen every 4 years, so in the normal cycle
21 of union activities in an election year they are going
22 to divert more of whatever accessible moneys they have
23 to their lobbying efforts and the following year they
24 will go back to normal for 3 years. You're not
25 challenging that normal variation in the -- in the

1 distribution of the moneys, correct?

2 MR. YOUNG: Correct, Justice Sotomayor. And
3 that, too, may vary from union to union, from State to
4 State even. As some of the Justices I'm sure know,
5 Virginia --

6 JUSTICE SOTOMAYOR: So I guess my problem is
7 I don't see how that, given your argument, is any less
8 alone than this special assessment where the labor --
9 where the objecting members at the end of the year will
10 get notice of what has happened that year, will have an
11 opportunity to place their Lehnert challenges and get
12 them ruled upon, and will, as Justice Breyer said, have
13 a benefit because they are going to either pay more if
14 the Lehnert -- pay less if the Lehnert challenges are
15 upheld or pay more if -- if they're not.

16 But I'm not quite sure how this is a
17 different loan.

18 MR. YOUNG: Well, we disagree with the
19 union's characterization of its supposed benefit. But,
20 Justice Sotomayor, I see my time has expired and I would
21 like to reserve a balance for rebuttal. I will try
22 address your question more thoroughly when I stand up
23 again.

24 CHIEF JUSTICE ROBERTS: Thank you, counsel.
25 Mr. Collins.

1 ORAL ARGUMENT OF JEREMIAH COLLINS

2 ON BEHALF OF THE RESPONDENT

3 MR. COLLINS: Mr. Chief Justice and may it
4 please the Court:

5 Justice Ginsburg is absolutely correct
6 that what we have suggested to the Court is that the
7 court of appeals decision be vacated, with the
8 consequence of reinstating the district court judgment.

9 CHIEF JUSTICE ROBERTS: Why did you give up
10 once the case was granted here? You didn't consider
11 that until the case came before this Court.

12 MR. COLLINS: That's correct, Your Honor,
13 and the reason for that is when the events in this
14 matter were new and the then union officers' actions
15 were being challenged, the instinct was: We are going
16 to defend the case. And as time went on there was no
17 rethinking of that situation. When the case was granted
18 here over our opposition, noting that we didn't think
19 the questions presented were really presented, the
20 officers of the union, who were not the ones involved in
21 the original case, thought about the situation and came
22 to the realization that they have no stake in the
23 procedures that are at issue here. This is a local that
24 had never done a mid-year increase in the past. What
25 was contemplated as a temporary increase here turned

1 into a permanent increase. The dues went up to
2 1.5 percent of salary a year after this increase ended.

3 JUSTICE ALITO: What is this local, and what
4 will the other locals do in the future when special
5 assessments are made? Will they provide notice or will
6 they go back to the old system?

7 MR. COLLINS: This local -- and I won't
8 belabor the term "special assessment" at the moment, but
9 when we get to the merits I think there is a
10 misunderstanding around that, Justice Alito. But this
11 local has put in a procedure which frankly would satisfy
12 the Petitioner s' concerns for the future if future
13 conduct was legitimately at issue here. But it is not,
14 for two reasons.

15 First, when we state that the district court
16 judgment would be reinstated, that's a judgment that was
17 not appealed by the Petitioners. That defines the
18 limits of what they can attain from this case, whatever
19 this Court may decide, and that decision gives whatever
20 protection it gives against future conduct. Now, it
21 gives essentially none for a very good reason. This was
22 a case that has been noted, brought only about a
23 one-time event. There were no allegations of an ongoing
24 practice, there was no request for declaratory or
25 injunctive relief.

1 JUSTICE KAGAN: Mr. Collins, as I understand
2 Mr. Young's argument, there is a serious dispute about
3 the adequacy of this notice, and it might be a dispute
4 about whether it was clear enough, about that it was
5 satisfying claims, or it might be a dispute about
6 whether it allowed refunds easily enough, but that Mr.
7 Young is contesting whether the notice complied with the
8 district court's order.

9 Now, as long as that's true, don't we have a
10 live case before us? Somebody has to answer that
11 question about whether your notice complied with the
12 order, and if it's the case that a court has to answer
13 that question, doesn't that depend on the questions
14 presented here, the substantive questions?

15 MR. COLLINS: No, it doesn't, Justice Kagan.
16 The Court's explained in a number of cases, beginning I
17 think with Walling v. Ruder, and also obviously
18 Munsingwear, and U.S. Bank Corp., a case can be in a
19 posture where this Court in disposing of it needs to
20 grant certain relief, clarification of the status of
21 prior orders, and yet the case is moot on the merits
22 such that the Court cannot appropriately reach the
23 merits.

24 That's what we have here. If there is a
25 dispute -- and I will explain in a moment why there

1 really isn't. But if there is a dispute, for example,
2 as to whether an individual failed to get their refund
3 because the notice was inadequate, that dispute is not
4 affected by and requires no decision of this court.

5 If the district court judgment is reinstated
6 then the question of whether we have fully provided all
7 relief called for by that judgment, which we believe we
8 have, would be before the district court's decision.

9 CHIEF JUSTICE ROBERTS: But this is not --
10 this is not an incidental matter. The whole point of
11 your friend's argument with the Hudson notice is they
12 want people to understand what's happening with their
13 union money. And they say this notice didn't let people
14 know that. And if the case is not moot and if they
15 prevail, they will have a right to be heard on what the
16 notice should say. And that will make a difference in
17 how many people opt out or how many people don't. And I
18 guess I'm following up on Justice Kagan's question.
19 That's a very important part of this case, what the
20 notice is going to say, and if we accept your view that
21 it's moot, that issue goes by the wayside.

22 MR. COLLINS: I think that's incorrect,
23 Mr. Chief Justice, for two reasons. First of all, the
24 district court required a certain kind of notice to be
25 given. We are stating the district court judgment

1 should be reinstated. If the notice we have given does
2 not comport with what the district court judgment which
3 was not appealed by the Petitioners requires, it will be
4 provided by the district court.

5 We are -- we are not contesting -- the
6 Petitioners are looking a gift horse in the mouth.

7 CHIEF JUSTICE ROBERTS: I'm sorry, I don't
8 see how that -- I don't see how that works.

9 The notice is only required by the district
10 court if the case is not moot. If the case is moot by
11 the notice you sent out, the district court doesn't have
12 a case on the basis of which to order a different
13 notice.

14 MR. COLLINS: No, I don't think that's
15 correct, Your Honor. A case can be moot in this Court
16 and this is what I believe Munsingwear, Walling v.
17 Reuter and the other cases, U.S. Bancorp more recently,
18 explained. At first it seems paradoxical, but it is not
19 paradoxical. A case -- there can be remaining issues
20 potentially in the district court, such as whether the
21 check that the plaintiff paid bounced or not, that could
22 potentially have to be resolved by a district court.
23 And it -- but it means, at least in terms of prudential
24 mootness, there is not a substantive merits issue
25 remaining for the court to be deciding. And it's really

1 quite simple. The Petitioners, as I say. Are looking a
2 gift horse in the mouth.

3 The apex, the acme that they can achieve in
4 this case, is what they got from the district court and
5 it was reversed. We are saying: Give it back to them.
6 Take back the reversal, reinstate the judgment.
7 Whatever they won they will have. We believe we have
8 already given them everything they want. If we have
9 not, the district court will do that.

10 But let me explain the second point, if I
11 may, Mr. Chief Justice, which is that there is no
12 legitimate issue here about whether the notice was
13 adequate. Mr. Young stated quite incorrectly that the
14 notice we have provided is the same as the notice the
15 district court struck down. That's absolutely
16 incorrect. The district court said that the 2005 notice
17 issued before the dues increased obviously did not give
18 specific notice of the dues increase, although it stated
19 that dues could be increased.

20 The district court specifically held at
21 petitioner appendix 73a that the 2006 notice which
22 described the so-called fund and the dues increase and
23 the purposes of it was completely adequate. And the
24 notice the district court -- one also has to realize,
25 the district court was requiring the union to refund

1 only the non-chargeable portion of activities attributed
2 to this increase.

3 A certain kind of notice would be needed for
4 that to justify how the union was computing what it was
5 saying with the chargeable portion to refund. But what
6 the union has done here is provide greater relief than
7 the district court ordered. We have refunded every
8 penny that anyone who requests had paid during the
9 increase.

10 So there is no serious question that the
11 notice that the union sent out, which explained what the
12 increase had been spent on, sufficiently informed
13 individuals as to whether they now want to get back
14 every penny, as we have offered them, of what they paid
15 under the increase.

16 CHIEF JUSTICE ROBERTS: I want you to move
17 to the merits. It may be a good time to do that.

18 MR. COLLINS: All right. Turning to the
19 merits --

20 JUSTICE SOTOMAYOR: Can I clarify a point?
21 I thought I heard and maybe I just didn't look at the
22 union regulations, the new ones. Is it limited to
23 180 days? I thought I heard your adversary say that
24 the --

25 MR. COLLINS: No, it has a provision that it

1 can't be repealed without a 180-day notice. There
2 can't, can't be a sudden repeal of the new procedure.

3 JUSTICE SOTOMAYOR: I see.

4 MR. COLLINS: But I do want to make clear,
5 we think nothing -- our position on mootness is not
6 dependent on the Court determining that the new
7 procedure will be in effect forever. Our position --

8 JUSTICE SOTOMAYOR: Could you tell me what
9 the burden is on the union to give a second Hudson
10 notice whenever there is a special assessment? Meaning
11 do you happen to know how frequently unions impose
12 special assessments and what the incremental cost is to
13 the union of giving such notice?

14 MR. COLLINS: That requires a fairly
15 extensive answer, I believe, Justice Sotomayor, partly
16 because --

17 JUSTICE SOTOMAYOR: Try to summarize it. I
18 wasn't looking to monopolize you.

19 MR. COLLINS: I believe -- I believe the
20 word "special assessment" is being used here with a
21 meaning that doesn't correspond to what this union did.
22 I can say this much: There has never -- there's been
23 only one other case in any Federal court that I am aware
24 of, and only in a district court, there's been no other
25 appellate court, dealing with any kind of assessment,

1 temporary dues increase and how it affects Hudson
2 rights.

3 So this is a non-event in the real world.
4 There are no challenges that have been made previously
5 to any kinds of assessments or increases.

6 But unions use assessments in two -- in many
7 different ways. And let me contrast one way with what
8 happened here, and I think it will show why there is no
9 serious question here about a need for a notice.

10 Some unions have a dues structure which
11 covers only certain kinds of activities. And they
12 contemplate a new kind of activity that they would not
13 normally pay for out of dues or fees. They say often
14 with a vote, which was not required here. There was no
15 vote required or taken here of bargaining unit members
16 for what occurred in this instance.

17 But you may have a union that says: We want
18 to make the kind of expenditure that's really
19 unanticipated. It's not what we normally do with our
20 dues. We are going to put it to a vote. If you approve
21 it, we will collect it, we'll probably put it in a
22 segregated fund separate from our treasury. That kind
23 of an assessment can raise potential issues, I would
24 acknowledge, under Hudson.

25 It's worlds away from what we have here

1 because all that happened in this case was that the
2 union increased from 1 percent to 1.25 percent of
3 salary, the regular membership dues, and the fees based
4 on those dues that were deducted by employers and paid
5 into the union's general treasury --

6 JUSTICE ALITO: Is it incorrect that this
7 was for what was termed a "Political Fight-Back Fund"?

8 MR. COLLINS: It was -- some union
9 communications described it as having that sole -- that
10 purpose. The October 27th letter, which was the most
11 detailed explanation, said it had two purposes,
12 basically to fight back at the bargaining table and to
13 fight back politically.

14 But what's essential, Justice Alito, it was
15 never suggested nor was it ever the case that this money
16 would be in any way segregated or treated as a separate
17 entity so to speak. So we have the Schermerhorn problem
18 here. Basically, Petitioners' position is based on the
19 fallacy exposed in Schermerhorn of trying to take part
20 of a unified general treasury and treat it as if it were
21 a distinct entity, because --

22 JUSTICE ALITO: Well, let me give you this
23 example and maybe you will say that this is different
24 from your case and the rules should be different in
25 these two cases. The annual dues for a particular --

1 for members of this union are 1 percent of their
2 salaries and let's say that amounts to -- or it's a
3 certain percentage of their salaries, and let's say that
4 amounts to \$500 annual dues. And let's say that in the
5 prior year 90 percent of the money collected by the
6 union was used for chargeable purposes, 10 percent for
7 non-chargeable purposes. So someone who objected, a
8 nonmember who objected, would be able to get back \$50.

9 Now, during the course of the year the union
10 levies a special assessment or whatever you want to call
11 it, and for this 90 -- the percentages are exactly
12 reversed. 90 percent is for non-chargeable, 10 percent
13 is for chargeable. So now a member who potentially
14 wants to object has \$450 at stake. Now, in that
15 situation, why shouldn't there be separate notice?
16 Aren't the economic incentives quite different?

17 MR. COLLINS: If I understand the
18 hypothetical, there could be a problem there if the
19 assumption is then that the union really is beginning a
20 kind of spending that's really foreign to the way it's
21 spent money in the past.

22 What needs to be explained here, though,
23 Justice Alito, is I don't think one would guess from
24 anything that has been said today that we are talking
25 about a period of time when the union's chargeable

1 spending increased and its non-chargeable spending
2 decreased. We are talking about a period of time when
3 objecting nonmembers did not even pay their pro rata
4 share of the concededly chargeable expenditures, meaning
5 they did not pay one penny for any political activities.

6 JUSTICE ALITO: Well, as I said, my
7 hypothetical may be very different from what happened
8 here, and maybe it's an unrealistic hypothetical and you
9 can answer that. But if it were to occur, should there
10 not be Hudson notice?

11 MR. COLLINS: Well, the problem -- it would
12 be a closer question, but I think not, because again it
13 would be caught up in the subsequent year.

14 JUSTICE ALITO: But what if the money is
15 going to be used for an election campaign? What if it
16 is going to be used to weigh in, in favor of one
17 gubernatorial candidate against another, in favor of one
18 slate of legislative candidates against another. And on
19 those issues, the nonmembers may have very strong
20 partisan and ideological objections. So why should they
21 not be given a notice at that time --

22 MR. COLLINS: It would depend --

23 JUSTICE ALITO: -- and given the opportunity
24 not to give what would be at a minimum an interest-free
25 loan for the purposes of influencing an election

1 campaign?

2 MR. COLLINS: It would depend,
3 Justice Alito. I think in your hypothetical, one might
4 be able to say -- there might be more facts needed, but
5 one might be able to say that what is occurring is
6 something that could not be anticipated reasonably by
7 the person who got the notice.

8 In this case, however -- and this is crucial
9 to this case -- the notice in 2005 told every nonmember
10 that, of our \$38 million budget, we spent 43.6 percent
11 of it last year on non-chargeable activities. And if
12 you do not object, we will spend whatever amount out of
13 our roughly \$40 million budget in the coming year on
14 various activities as we perceive the need, including
15 specifically ballot initiatives, which were specifically
16 mentioned in the notice as one of the things the union
17 spent its money on.

18 Now --

19 CHIEF JUSTICE ROBERTS: I thought your
20 point, though, was this was a very special ballot
21 initiative. That's what the literature suggests, that
22 this was not sort of the normal run in the courts every
23 two years, every election cycle we spend something.
24 That's why it's a special assessment.

25 MR. COLLINS: Well, I don't-- I wouldn't

1 call it a special assessment if one uses that term as it
2 is usually used, to mean a very short-term assessment
3 apart from general union functions for a new kind of
4 function.

5 CHIEF JUSTICE ROBERTS: That's not
6 short-term; it's just until November 7th or whatever.

7 MR. COLLINS: But it's nothing new under the
8 sun, Mr. Chief Justice. And we can see that, for
9 example, the record reflects the audit for 2005 shows us
10 that in addition to the money that was attributed to the
11 dues increase and spent in opposing these ballot
12 propositions, additional money, approximately
13 \$2 million, was spent on those same purposes from the
14 pre-increase dues.

15 So ballot -- opposing ballot initiatives is
16 nothing new for this scenario--

17 JUSTICE BREYER: Can you think for a second
18 to go back to Justice Sotomayor. Now, I would like you
19 to see, I think, why she asked the question.

20 As I understand it, the way it works now is
21 at the beginning of, say, September. September of year
22 2 we look back to year 1, and we see what the
23 percentages were. And now we in the union calculate a
24 budget for year 2. And we go and get approval or
25 opt-outs on that basis. Now what I thought coming in

1 here is that the problem was going to be, if you have to
2 have a new notice in the middle of the year for special
3 political assessments, you are going to discover that
4 half the time you don't know if they are special
5 political assessments. It's an impossible line to draw.
6 It's really tough. You are making the argument that
7 however you draw the line, we are on the right side of
8 it, not the wrong side. Isn't that what basically what
9 you are saying, it's not a special assessment, it wasn't
10 really accepted. Okay.

11 Now, but there is a new argument that's come
12 along that I hadn't focused on. If we can avoid the
13 administrative problem by saying all special assessments
14 require a new notice, whether they are for political
15 purposes or not. Hence the question that I was trying
16 to get -- I was very interested in your answer. If we
17 had that rule which avoids the problem of saying which
18 is which, how does that affect the union? Not
19 necessarily yours but unions in general. How often is
20 it that you draw up your budget for year 2 in September,
21 put it into effect, and during the year you discover you
22 need more money from people for any reason, and,
23 therefore, you change what you thought they were going
24 to contribute. How often, if you can give us an
25 estimate, and you are in a better position than I. Does

1 it happen a lot, rarely, a little? What do you want to
2 say?

3 MR. COLLINS: I --I --

4 JUSTICE SOTOMAYOR: And a footnote. And it
5 happens a lot, how burdensome is it?

6 MR. COLLINS: I will get to that, Justice
7 Sotomayor. I have tried to determine how frequent it
8 is, and I have been unable. All I've been able to
9 determine is, there is no litigation over it. How
10 often -- and I have been able to determine that
11 so-called assessments take many different forms from --
12 and I think there are crucial distinctions from funding
13 what would-- a kind of charge that would not otherwise
14 be funded out of dues for some short period of time to
15 the opposite extreme.

16 What we have here and what I don't think
17 would be called an assessment frankly by anything I've
18 read, a temporary dues increase which became permanent
19 and which simply increased the total flow of dues and
20 fees into the general treasury and which went for the
21 usual, the kinds of activities the union had always
22 funded. And in that regard, there is one --

23 JUSTICE SOTOMAYOR: Could you please answer
24 my question?

25 MR. COLLINS: The burden.

1 JUSTICE SOTOMAYOR: All right. The burden.

2 MR. COLLINS: The burden consists of two
3 things, Justice Sotomayor. The -- if a union has to
4 give a new Hudson notice in a situation like this
5 whereas I have been trying to explain the spending that
6 went on is really not different from what one would have
7 reasonably anticipated given the notice, then we have
8 litigation and disputes about the need for new notices
9 whenever any number of things happen. Because one thing
10 that happened here that is undisputed but hasn't been
11 discussed is that collective bargaining costs were up
12 six-fold in 2005 over 2004, and they were up six-fold in
13 2006 over 2005.

14 CHIEF JUSTICE ROBERTS: One reason -- I mean
15 we are dealing with a situation where the union is
16 compelling nonunion members to give them money for
17 political activities. We allow, as I understand Hudson
18 as I read it, because you can't figure out what that is,
19 you wait until the end of the year. In other words,
20 it's a compromise for administrative convenience.
21 Normally you wouldn't allow it at all, as I -- at least
22 under the law as I read it, you would not allow people
23 to take money -- you would not allow the union to take
24 money from people who don't want to spend it on
25 political activities so the union could spend it on

1 political activities. But we allow it during the course
2 of the year because it's impossible as you go on to sort
3 these things out. I thought the argument on the other
4 side was when you have a special assessment, an
5 additional charge, there you don't have the
6 administrative problem. You can tell, it's .25%. So
7 you can't take that until you tell them, do you want to
8 object or are you happy -- are you fine with having this
9 spent on political purposes?

10 MR. COLLINS: The reason, Mr. Chief Justice,
11 that it isn't that straight forward is quite simply that
12 all of these questions about it's a special assessment,
13 we can figure out what it is, we can treat it
14 separately, flounder when one realizes that so-called
15 special assessment is simply a dues increase. Because
16 if I were to try to imagine -- let's try to imagine the
17 notice that could have been given. If I were giving a
18 new notice in the fall of 2005 to explain to all
19 nonmembers how things look now compared to what they --
20 how they may have looked when the Hudson notice was
21 given, I would say the following, completely consistent
22 with all the facts of record in this case as revealed in
23 the audit. I would say: We've determined we need more
24 income. Part of this is because we anticipate
25 \$3.7 million in fight-back expenses this year. Another

1 part is we expect more than \$3-1/2 dollars of additional
2 bargaining costs this year, and we expect a lot of other
3 changes on our costs.

4 On the Petitioner's theory, and this is why
5 Schermerhorn is the complete answer to their theory,
6 there is a constitutional violation if the union says:
7 We are going to view this increase as paying for our
8 additional political costs, and it's going to free up
9 our bargaining -- our general treasury for the
10 bargaining. That's a violation. But if you say: We
11 are going to treat this increase as covering those new
12 bargaining costs we told you about, that's going to free
13 up our general treasury for the political costs.

14 CHIEF JUSTICE ROBERTS: But, I mean --I'm
15 reading from the district court opinion. It said that
16 this assessment would be used, and they are quoting from
17 union material, "for a broad range of political
18 expenses, including television, radio advertising,
19 direct mail, voter registration, voter education, and
20 get-out-the-vote activity in our work sites and in
21 communities across California." And it further said,
22 "The fund will not be used for regular costs of the
23 union such as office rent, staff salaries, or routine
24 equipment replacement."

25 MR. COLLINS: But two points,

1 Mr. Chief Justice.

2 First, as the Court of Appeals pointed out,
3 there were other statements that said the money would be
4 used for both purposes. But as Schermerhorn points out,
5 Schermerhorn says even if you specifically say this part
6 of our dues income is going to be earmarked for this
7 purpose, it's artificial when you're dealing with a
8 general union treasury, not a separate segregated fund,
9 to give that separate legal status.

10 And that -- because that is why -- my point
11 to you, Mr. Chief Justice, is nothing in the world would
12 have changed here.

13 JUSTICE ALITO: Suppose -- suppose that the
14 proponents of Propositions 75 and 76 had come to the
15 union and said, would you please give us an
16 interest-free loan for money, because we want to use
17 this money to -- to persuade the -- the electorate to
18 enact these, but don't worry, because we're going to pay
19 it back right after the election, when we've achieved
20 our electoral ends.

21 Would -- would the union provide the money
22 because it's all going to come out in the wash?

23 MR. COLLINS: I -- I really can't answer
24 that question. I don't know.

25 JUSTICE ALITO: Well, I -- gee, I really

1 doubt that you -- that they would. But what's the
2 difference? If you look at this from the perspective of
3 a nonmember who doesn't want those ballot initiatives to
4 be defeated, saying that we're going to give you your
5 money back. We're going to use your money to achieve a
6 political end that you oppose, but don't worry, because
7 we're going to give it back to you next year after we've
8 achieved our political end.

9 How does that solve the problem?

10 MR. COLLINS: That's not the situation here,
11 Justice Alito. The nonmembers were told in June 2005 in
12 the Hudson notice that if you don't object, we may spend
13 millions of dollars on political activities, including
14 ballot initiatives. If a person didn't want to support
15 that, they merely needed to object. But what then
16 happened -- and this is what gets lost in the messaging
17 about the dues increase -- what actually happened in the
18 real world in the period that followed is that compared
19 to the numbers in the 2004 Hudson notice, the union
20 spent less on nonchargeable matters and more on
21 chargeable matters, and the only reason there's a case
22 here in the Court is that the union, for whatever PR
23 purposes, whatever it may have been, instead of saying,
24 we're going to treat the increase as covering our vastly
25 increased bargaining costs, thereby freeing up money for

1 politics, we're instead going to describe this increase
2 as being attributable to our political costs, thereby
3 freeing up money for bargaining. But what the union is
4 spending its money on is bargaining. More money --

5 JUSTICE KENNEDY: It -- it seems to me that
6 this answer is, it's so confusing that the Court
7 probably should consider whether or not an opt-in
8 requirement is -- is preferable. I -- we're talking, in
9 the first exchange, you had with Justice Alito, he gave
10 you a very simple question: 90 percent, 10 percent.
11 Then, it's reversed. Special assessment for 90 percent
12 political. And the point there was that you're taking
13 someone's money contrary to that person's conscience.
14 And that's what the First Amendment stands against. And
15 you simply wouldn't answer that question.

16 You would -- and then you say well, maybe
17 it's -- it's fungible, it's hard to -- it seems to me
18 that you're avoiding a very, very critical question on
19 the constitutional rights of these objecting members.

20 MR. COLLINS: I won't avoid the -- I don't
21 believe -- I was not meaning to avoid it,
22 Justice Kennedy. What I thought I said is, if you are
23 springing something on someone that's not anticipated in
24 the notice that gave them their rights to object, then
25 there's a problem.

1 My point is very simple. Anyone reading the
2 2005 notice -- Hudson notice, if that person was
3 asked -- if I -- if I don't object, might the union
4 spend \$3.7 million next year on ballot initiatives that
5 I may not want to oppose? The answer would be yes. The
6 notice made it perfectly clear --

7 JUSTICE KENNEDY: Let me ask you this, just
8 in the way of background: In collective bargaining
9 negotiations, do the unions consider the -- as one
10 factor the importance of ensuring that the government or
11 employer has fiscal stability?

12 MR. COLLINS: That's generally considered,
13 yes.

14 JUSTICE KENNEDY: Isn't that ultimately a
15 political judgment, so that even collective bargaining
16 involves a core political judgment?

17 MR. COLLINS: And that's exactly what the
18 Court said in Abood. And the reason that exclusivity
19 and agency fees are permitted in -- in serving an
20 important government purpose is that the government has
21 concluded that its interest lies in having an exclusive
22 spokesperson who -- with whom it can negotiate so that
23 it won't have an array of different employment relations
24 or concerns.

25 JUSTICE KENNEDY: But you -- you concede

1 then in ordinary collective bargaining, there are
2 critical and important significant political judgments
3 that are being made by the union in the course of
4 collective bargaining with chargeable expenses?

5 MR. COLLINS: Absolutely. And Abood
6 explicitly says that. And Abood then says that
7 nevertheless, the government -- we're talking about a
8 regulatory scheme to promote the government's interest
9 in orderly labor relations -- the government needs to
10 make arrangements and agreements on terms of employment;
11 it has a vital interest in having an exclusive
12 representational arrangement where that can be
13 accomplished. And that, the Court held in Abood -- and
14 it's not challenged by Petitioners -- that justifies the
15 degree of impingement that is inherent in the fact that,
16 as Your Honor correctly says, all bargaining,
17 particularly in the public sector, has political
18 elements in it.

19 CHIEF JUSTICE ROBERTS: Thank you, counsel.

20 Mr. Young, you have 4 minutes remaining.

21 REBUTTAL ARGUMENT OF WILLIAM J. YOUNG

22 ON BEHALF OF THE PETITIONERS

23 MR. YOUNG: Thank you, Mr. Chief Justice.

24 JUSTICE SCALIA: Mr. Young, I hope this
25 won't use up much of your time, but I do have a pressing

1 question to make sure that we're just not spinning our
2 wheels here.

3 What if the union here had -- had simply
4 said all this additional assessment will go to
5 bargaining activities, and then simply used its original
6 assessment, the portion that had been anticipated to be
7 used for bargaining, for political activities. It could
8 do that, couldn't it?

9 It's not committed to -- to, you know, an
10 80-20 or whatever the division is, simply because that's
11 what's given out in the first notice. It can indeed use
12 its -- the anticipated portion for bargaining for
13 political activities?

14 MR. YOUNG: It would be free to do so,
15 Justice Scalia.

16 JUSTICE SCALIA: So why are we wasting our
17 time? I mean, all the unions are going to do is say
18 this is a general assessment for bargaining purposes,
19 and then use their -- their general funds for the
20 political thing.

21 MR. YOUNG: Because the nonmembers still
22 have that right to challenge, Justice Scalia.

23 JUSTICE SOTOMAYOR: But they don't lose it;
24 they're going to do it the following September. The
25 attractive part of your argument from the beginning was

1 that this is somehow a forced loan. And I understand
2 the attractiveness of that. But it goes back to what
3 Justice Breyer said from the beginning, which is,
4 given -- as has been recognized, that money is fungible,
5 and that you can't really often predict what's going to
6 happen in the future, it's been developed a system that
7 cyclically gets money to the people back.

8 MR. YOUNG: And money is fungible to a
9 degree, Justice Sotomayor -- Sotomayor -- excuse me.
10 And I respect that argument. But let's remember the
11 facts as we have them here. In the facts of this case,
12 it was a segregated fund. There's a separate portion, a
13 separate line item in the union's notice --

14 JUSTICE SCALIA: Okay. So you win and it
15 will never happen again. It'll never again be called a
16 segregated fund for politics.

17 (Laughter.)

18 MR. YOUNG: I lose, Justice Scalia, and it
19 will happen all the time, I'm afraid.

20 JUSTICE BREYER: Well, but the -- the
21 problem if you win in this case, and then there is this
22 other way of getting to the same -- the same result --
23 is that the other way of getting to the same -- same
24 result, while permissible, is far less transparent. And
25 people won't understand it, and it -- it encourages a

1 kind of slyness that seems highly undesirable.

2 And the virtue of the present system is that
3 it does require some forced loans, that's true, but it
4 does wash out in the wash, and it ends up being fair to
5 the objectors. And it's simply hard to think of a
6 better system that doesn't provide more administrative
7 problems than the existing one.

8 MR. YOUNG: But --

9 JUSTICE BREYER: So that's -- go ahead.

10 MR. YOUNG: And I thank you, Justice Breyer.
11 I'm sorry for interrupting.

12 I understand that, Justice. And for
13 ordinary union dues, that's why when Justice Sotomayor
14 asked me at the beginning of the argument whether we're
15 challenging the ordinary Hudson system, I answered no,
16 because that system is perfectly adequate for ordinary
17 union dues.

18 JUSTICE SOTOMAYOR: The problem is that I am
19 being told by your adversary, and since we don't know,
20 I'm always afraid of writing a decision in a vacuum,
21 okay?

22 MR. YOUNG: Sure.

23 JUSTICE SOTOMAYOR: That union structure,
24 their business in a myriad number of ways, that some
25 have a very small due each year, and a larger special

1 assessment for special projects. And I assume there's
2 endless variety.

3 You're proposing a rule that every single
4 time an assessment outside of annual dues is imposed,
5 that a new Hudson notice can be given. And you're
6 suggesting Justice Scalia, that all they have to say is
7 we think it's going to be for chargeable effect.

8 MR. YOUNG: Well, the issue -- I'm sorry.

9 CHIEF JUSTICE ROBERTS: Briefly, counsel.

10 MR. YOUNG: Yes, thank you,
11 Mr. Chief Justice.

12 So Justice Sotomayor, the answer is that I'm
13 saying it would be brief -- and my friend Mr. Collins is
14 saying that it doesn't happen that often, so the burden
15 is minimal. Unions have other options than extracting
16 this money from unwitting nonmembers, through
17 interest-free loans.

18 And I thank the Court.

19 CHIEF JUSTICE ROBERTS: Thank you, counsel.

20 The case is submitted.

21 (Whereupon, at 11:20 a.m., the case in the
22 above-entitled matter was submitted.)

23

24

25

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<div><div>7</div><div>7th 38:6</div><div>70 16:23 17:3</div><div>73a 5:24 30:21</div><div>75 44:14</div><div>76 3:24 20:23</div><div>44:14</div></div>				
<div><div>8</div><div>80-20 49:10</div></div>				
<div><div>9</div><div>90 35:5,11,12</div><div>46:10,11</div></div>				